

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION**

Wayne Steven Tippett, #067443,)
)
Petitioner,) C.A. No. 9:09-593-HMH-BM
)
v.) **OPINION AND ORDER**
)
Warden McCall,)
)
Respondent.)

)

This action has been filed by the Petitioner, pro se, pursuant to 28 U.S.C. § 2241. Petitioner is currently incarcerated at the Perry Correctional Institution (PCI), which is operated by the South Carolina Department of Corrections (“SCDC”).

Petitioner asserts four (4) grounds for relief in his Petition, all of which relate to the calculation of his sentence. Respondent has filed a Return and Motion for Summary Judgment in which he addresses Petitioner’s arguments in Grounds One through Three. However, with regard to Ground Four, the Respondent has not addressed the specific issue being raised, which is an ex post facto claim. Petitioner was originally sentenced in state court in 1972, but escaped in 1976, and was not returned to the SCDC until 2002. See Respondent’s Exhibit Three, at ¶¶ 2-4. Petitioner argues that by the time of his return in 2002, the law had changed, and the SCDC calculated Petitioner’s sentence with a max-out date of July 7, 2001. Id. at ¶ 4. In Ground Four, Petitioner is not arguing that SCDC has misapplied the calculations based upon the current law. Rather, he contends that he has not been given the benefit of calculations based upon the law in effect when he was sentenced in 1972. While the Respondent contends that SCDC has correctly calculated Petitioner’s sentence,

Petitioner's ex post facto argument in Ground Four has not been addressed. This issue needs to be specifically addressed by the Respondent. Accordingly,

IT IS ORDERED that Respondent's motion for summary judgment, docket number 9, is denied, at this time, without prejudice. The Respondent shall have thirty (30) days to refile his motion, to include arguments specifically addressing Ground Four of the petition.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

January 12, 2010
Greenville, South Carolina